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No. 90-1115

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

CORREALE F. STEVENS, District Attorney
of Luzerne County,

Petitioner,

vs.

M. RUSSELL BUCHANAN,

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Supreme Court has jurisdiction to review a state determination of the evidentiary requirements of a state preliminary hearing?

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, M. Russell Buchanan, respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari, seeking review of the Pennsylvania Supreme Court's opinion in this case. That opinion is reported at 581 A.2d 172.

STATEMENT OF JURISDICTION

The judgment to be reviewed was entered by the Supreme Court of Pennsylvania on October 10, 1990. The jurisdiction of this Court is not invoked pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution
Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers,and effects, against unreasonable seizures, shall not be violated,and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

COUNTERSTATEMENT OF THE CASE

On June 24, 1987, the Respondent, M. Russell Buchanan, was arrested and charged with committing the offenses of statutory rape, corruption of minors and endangering the welfare of children. At the preliminary hearing, the Commonwealth, over defense counsel's objection, presented the hearsay testimony of the investigating police officer, who recounted the alleged

criminal incident as it was alleged to have been related to him by the purported victim, a seven year old child. The alleged victim did not testify, nor was any other evidence presented at the hearing. The sole evidence presented was the investigating officer's hearsay rendition of the alleged incident. The District Justice ruled that the Commonwealth had established a *prima facie* case and bound Mr. Buchanan over for trial.

Subsequently, an interlocutory appeal of the decision to bind the case over for trial was perfected and the Pennsylvania Supreme Court entered an Order dismissing the charges and discharging the Respondent. The Pennsylvania Supreme Court held that where the sole evidence presented against a defendant at a preliminary hearing is hearsay evidence, the Commonwealth has failed to establish a *prima facie* case against the Defendant.

REASONS FOR DENYING THE WRIT

I.

The United States Supreme Court should not review a state determination of the evidentiary requirements of a state preliminary hearing, as no federal question is presented therein.

The Fourth Amendment to the United States Constitution requires a judicial determination of probable cause as a prerequisite to extended restraint of

liberty following arrest. **Gerstein v. Pugh**, 420 U.S. 103, 95 S. Ct. 854, 43 L.Ed. 2d 54 (1975). In **Gerstein**, this Court stated that there is no single preferred pretrial procedure for determining probable cause, and this Court recognized the desirability of flexibility and experimentation by the States in this area. This probable cause determination may thus, under the Fourth Amendment, be reached in a variety of forums; Pennsylvania has chosen the preliminary hearing.[1] Pennsylvania Rules of Criminal Procedure Nos. 141-149, 42 Pa. C.S.A.

With the Pennsylvania Supreme Court's adoption of the Pennsylvania Rules of Criminal Procedure, the right of the accused to a preliminary hearing became a part of the statutory law of the Commonwealth. In addition to providing the preliminary hearing, state law also sets forth the procedure for the preliminary hearing. Pa. R. Crim. P. 141, 143, 42 Pa. C.S.A. State law further mandates that the prosecution's burden of proof at the preliminary hearing is to establish at least a *prima facie* case of the defendant's guilt. *Id.* As such, the right to a preliminary hearing and the evidentiary requirements of this hearing are purely matters of state Law.

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[1]. There is no constitutional right, federal or state, to a preliminary hearing. **Coleman v. Alabama**, 399 U.S. 1, 90 S. Ct. 1999, 26 L. Ed. 2d 387 (1970); **Commonwealth v. Mayberry**, 459 Pa. 91, 327 A.2d 86 (1974).

In order to resolve the issue posed in the instant case, that is, whether hearsay evidence alone is sufficient to establish a *prima facie* case at a preliminary hearing, the Pennsylvania Supreme Court had to interpret the aforesaid Pennsylvania statutory law governing a preliminary hearing. In **Albertson v. Millard,** 345 U.S. 242, 244, 73 S. Ct. 600, 601 - 602, 97 L. Ed. 983, 985 (1953), this Court held that the interpretation of state legislation is the function of state judicial and administrative authorities, and the construction given to a state statute by the state courts is binding upon the federal courts. Accordingly, the Pennsylvania Supreme Court's interpretation of state statutory law governing a preliminary hearing is a state function, and the construction of the state preliminary hearing statutes by the Pennsylvania Supreme Court is binding upon the federal courts. Further, in **Coleman v. Alabama**, 399 U.S.1, 90 S.Ct. 1999, 26 L. Ed. 2d 387 (1970) in discussing the preliminary hearing in Alabama, this Court acknowledged that it was bound by the Alabama Court of Appeals' construction of the governing Alabama law as to preliminary hearings in that state. As such, the Pennsylvania Supreme Court's ruling that where the sole evidence presented at a preliminary hearing is hearsay, a *prima facie* case is not established is binding upon the federal courts. Similarly, the Pennsylvania Supreme Court's determination of evidentiary requirements at a state preliminary hearing is thus a Pennsylvania preogative and ought not be disturbed by the United States Supreme Court, for no federal question is presented therein.

CONCLUSION

Based upon the foregoing law and argument, the Respondent, M. Russell Buchanan, prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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